

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
DAVID M. GLOVER, JUDGE

DIVISION IV

CACR07-339

January 23, 2008

BILLY R. LOGGINS

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

APPEAL FROM THE UNION
COUNTY CIRCUIT COURT,
[CR-05-729-1]

HONORABLE HAMILTON H.
SINGLETON, CIRCUIT JUDGE

AFFIRMED

Appellant, Billy Loggins, was convicted by a Union County jury of one count of delivery of a controlled substance, cocaine. He was sentenced to thirty years in the Arkansas Department of Correction and fined \$15,000. His sole point on appeal is that the trial court erred in denying his motion for directed verdict. We affirm.

At trial, the State's evidence revealed that on November 8, 2005, the El Dorado Police Department, using Alan Hagler as a confidential informant, set up a drug buy between Hagler and a man named Jonathan Henry at Hagler's residence. Testimony indicated that the sole purpose of this operation was to make a covert narcotics purchase from Henry and not from anyone else. Loggins drove Henry to Hagler's residence, and

Henry went inside while Loggins remained in the vehicle. Henry sold Hagler three rocks of crack cocaine for fifty dollars, and the drug buy was recorded. The fifty dollars used to purchase the cocaine was from a “drug buy fund,” and the serial numbers on the ten-dollar bill and the two twenty-dollar bills were recorded prior to the cash being used in the drug buy. After the buy was completed and Henry returned to the car, Loggins drove away.

The officers witnessing the drug buy radioed other officers with the description of the vehicle and the license plate number, and Loggins was stopped after failing to use his turn signal for two turns. During the vehicle stop, Loggins was arrested on an outstanding warrant for failure to pay child support. The officers making the stop found the buy money from the recently completed drug transaction in Loggins’s pocket together with about \$200, as well as bundles of \$600, \$191, \$200, \$400, and \$400 in the console of the vehicle. One of the arresting officers testified that Loggins told them that he made \$200 per week cleaning carpets, and he offered no other explanation for the source of the money found on his person and in the vehicle. Only copies of the cash from the “drug buy fund” were available at trial – it was explained that there was only a small amount of money available for drug buys, and the money used in this drug buy was placed back into the fund for future drug purchases. There was also officer testimony, over Loggins’s objection, that Loggins had a long history of selling narcotics.

After the State’s case-in-chief, Loggins made a motion for directed verdict, arguing that the State presented no evidence regarding any knowledge or intent on his

part to assist in any drug transaction, even though he drove Henry to Hagler's house and some of the buy money was found in his pocket. The State responded that there was a very narrow window of time between the drug buy and Loggins's vehicle being stopped, and that the buy money was found in Loggins's pocket along with the unexplained presence of over \$1700 in cash in the vehicle's console. The trial court denied this motion.

Loggins testified in his own defense. He stated that he had not previously been convicted of a crime, although he acknowledged that he was currently on probation for a hot check. He explained that prior to November 8, he had found an apartment that he could afford and that he was making repairs to it for the landlord in exchange for not having to put down a deposit. He said that he was staying with his mother during the time he was making repairs to the apartment, and that on November 8, after he took his girlfriend to work, he had gone to his mother's house, and Henry had called him looking for a ride. Loggins said that Henry told him that if Loggins would take him somewhere, Henry would pay Loggins some of the money he owed him. Loggins testified that he was not going to get Henry, but that he and his mother were having an argument about some clothing, and when Henry called again, asking if Loggins was coming, Loggins told Henry that he would come get him because he wanted to get away from the argument with his mother. Loggins said that he picked Henry up; that Henry showed him where to go; that Henry told him that he would be right back, got out of the car, and went inside

the house; that Henry came back outside in about two minutes and they left; and that Henry gave him forty dollars of the money he owed him.

Loggins said that he noticed two police cars, one unmarked, across the street, and that he put his signal on when he turned. He said that when the police cars pulled him over and he asked what was wrong, an officer told him that his car fit the description of the vehicle in a robbery that had just been committed. Loggins explained that the money found in the vehicle was his and his girlfriend's savings, and that it was in the vehicle because some things had been stolen out of the apartment he was renovating and he put the money in the vehicle for safekeeping. Loggins denied knowing what Henry was intending to do when he gave Henry a ride.

On cross-examination, Loggins admitted that he had a prior felony conviction for forgery. He said that he was making \$200 per week, and from that he paid seventy-five dollars per week in child support, supported a girlfriend, purchased the materials for the apartment, and had saved \$1791. He further explained that his girlfriend made almost \$700 every two weeks, and that some of the money found in the vehicle belonged to her. Loggins denied that Henry had given him fifty dollars after Henry got back into the car, stating that all Henry gave him was two twenty-dollar bills. Loggins also denied failing to use his turn signal.

After Loggins's testimony, his attorney renewed his motion for directed verdict and the trial court again denied it. The jury found Loggins guilty of delivery of a controlled substance, cocaine.

In *Turbyfill v. State*, 92 Ark. App. 145, 149-50, 211 S.W.3d 557, 559 (2005) (citations omitted), this court set forth our standard of review for challenges to the sufficiency of the evidence:

We treat a motion for directed verdict as a challenge to the sufficiency of the evidence. In our review of the evidence, we seek to determine whether the verdict is supported by substantial evidence. However, we consider only the evidence that supports the conviction without weighing it against other evidence that is favorable to the accused. If the evidence is of sufficient certainty and precision to compel a conclusion and pass beyond mere suspicion and conjecture, the evidence is substantial. Further, we do not weigh the credibility of the witnesses on appeal; such matters are left to the factfinder. A jury is not required to believe the defendant's version of events because he is the person most interested in the outcome of the trial. Also, because of the difficulty in ascertaining intent, it is presumed that a person intends the natural and probable consequences of his acts, and the factfinder may draw upon common knowledge and experience to infer the defendant's intent from the circumstances.

Circumstantial evidence may constitute sufficient evidence to support a conviction, but it must exclude every other reasonable hypothesis other than the guilt of the accused. *Tomboli v. State*, ___ Ark. App. ___, ___ S.W.3d ___ (Nov. 28, 2007). The question of whether the circumstantial evidence excludes every other reasonable hypothesis consistent with innocence is for the jury to decide. *Id.*

Appellant was charged as an accomplice in this matter. A person is an accomplice if, “with the purpose of promoting or facilitating the commission of an offense, the person: ... (2) aids, agrees to aid, or attempts to aid the other person in planning or committing the offense....” Ark. Code Ann. § 5-2-403(a) (Repl. 2006). The principal and accomplice are equally criminally liable for the offense; there is no distinction as far as criminal liability is concerned. *Clark v. State*, 358 Ark. 469, 192 S.W.3d 248 (2004).

Merely being present at a crime scene does not make one an accomplice as a matter of law — the presence of the accused in the proximity of a crime, the opportunity to commit the crime, and an association with a person involved in a manner suggestive of joint participation are relevant factors in determining whether a person is an accomplice. *Id.*

In the present case, Loggins does not dispute that he drove Henry to Hagler's house, but rather he argues that he did not know that Henry was going to Hagler's house to sell Hagler cocaine. However, when the vehicle Loggins was driving was pulled over shortly after the drug transaction, the buy money was found in Loggins's pocket, and large amounts of cash were also found in the console of the vehicle. While Loggins offered an explanation for both the buy money and the large amounts of cash, the jury was not required to believe his version of the events. Viewing the evidence in the light most favorable to the State, we hold that there is sufficient evidence to support Loggins's conviction for delivery of a controlled substance.

Affirmed.

BIRD and VAUGHT, JJ., agree.